RECENT CASES.

Agency — Nature and Incidents of Relation — Knowledge of Agent: when Imputed to Principal. — The president of a bank secured by fraud a promissory note from the maker, which he indorsed for value to the bank, acting both as indorser and as agent for the bank. The bank sues the maker, who claims that the bank was affected, through its agent, with notice of the fraud. *Held*, that the bank may not recover. *First Nat. Bank* v. *Burns*, 103 N. E. 93 (Ohio).

To the general rule that the knowledge of the agent within the scope of employment is the knowledge of the principal, an exception is made where it would be against the agent's interest to communicate such knowledge. *Frenkel* v. *Hudson*, 82 Ala. 158; *Innerarity* v. *Merchants' National Bank*, 139 Mass. 332. See Mechem, Agency, § 723. The theory is that the general rule rests on the presumption that the agent has communicated his knowledge to the principal; it does therefore not apply where it is clear that the agent will not in fact inform the principal. See *Wickersham* v. *Chicago Zinc Co.*, 18 Kan. 481, 486. Another ground for the general rule is the identification of principal and agent. See *Mountford* v. *Scott*, 3 Madd. 34, 40; *Houseman* v. *Girard Building Ass'n*, 81 Pa. St. 256, 262. On this view there is no basis for such an exception, for knowledge would be implied in all cases. Each theory seems but a fictitious explanation of a rule of policy, that one who deals through agents is bound by notice that they have acquired. It seems fair, on this basis, to make an exception where the agent is acting for his own adverse interests. The principal case denies any such exception. The court, however, makes the distinction that where the agent is the sole party in the transaction, his knowledge will be imputed to the principal, in spite of his adverse interest. *Newell* v. *Hadley*, 206 Mass. 335, 92 N. E. 507. *Contra*, *National Bank of Nephi* v. *Foote*, 12 Utah 157, 42 Pac. 205. As a sub-exception, this distinction seems to be based on a sound policy, that a principal should not be regarded as a purchaser without notice, when he must rely on the act of the very agent who knew. The result may further be supported on the theory that the agent has really confederated in a tort on the defendant, and that the principal cannot claim the benefit of the wrongful act without accepting the responsibility for it as well. The principal case therefore reaches a correct result, it is submitted.

Bankruptcy — Preferences — Statutes Requiring Recording of Transfers. — More than four months before bankruptcy an insolvent transferred property to the appellant, which the latter could reasonably have known would result in a preference. The transfer was by deed, which was recorded less than four months before the filing of the petition. By the law of Ohio the unrecorded deed was valid except as to subsequent purchasers in good faith. The trustee in bankruptcy now seeks to avoid the transfer as a preference. *Held*, that the deed may be set aside. *Carey* v. *Donohue*, 31 Am. B. Rep. 210 (C. C. A., 6th Circ.).

Section 60, a, of the National Bankruptcy Law provides that "where a preference consists of a transfer, such period of four months shall not expire until four months after the date of recording or registering of the transfer, if by law such recording or registering is required." This provision was added in 1903 for the purpose of changing the rule by which the date of such a preferential transfer was held to take effect from delivery of the deed. See Collier on Bankruptcy, 8 ed., 654. Such a rule made it possible for a creditor to conceal his preference for the four months and record his deed just before bankruptcy. Unlike § 3, b,

of the act, the provision in § 60, a, is effective only when recording is required, not when it is "permitted or required." This may mean one of three things. First, that the clause is operative only when recording is necessary to make the transaction valid between the parties. See *In re Hunt*, 139 Fed. 283, 286. The amendment is then ineffective. Or the meaning may be that "required" is equivalent to "required as against creditors." Several cases have gone this far, putting the trustee in the shoes of the creditors. *Loeser* v. *Savings, etc. Co.*, 148 Fed. 975. *In re Montague*, 143 Fed. 428. See 20 HARV. L. REV. 645. Both of the above interpretations proceed upon the theory that for recording to be required within the meaning of the statute it must be required as against those persons the trustee represents. But there is nothing whatever in the language of § 60, a, which would limit its operation to transfers of this kind. The interpretation adopted by the court in the principal case, that the clause includes transfers where for any purpose recording is required, seems more desirable. The purpose of this section of the amendment is to make more uniform the rule for avoiding preferences. Since the state statutes vary greatly as to the class of persons against whom record is required, it does not make for uniformity for that factor to determine whether there has been a preference. Nor is the view contended for without the support of authority. *In re Beckhaus*, 177 Fed. 141; *English* v. *Ross*, 140 Fed. 630. *Contra*, *Meyer Bros.* v. *Pipkin Drug Co.*, 136 Fed. 396. It is to be hoped that the Supreme Court will adopt this, rather than follow out its former view that the trustee's right to avoid a recorded transfer depends both upon his status and the peculiarities of the state statutes. *York, etc. Mfg. Co.* v. *Cassell*, 201 U. S. 344.

BANKRUPTCY — PROVABLE CLAIMS — CLAIMS UNDER EXECUTORY CONTRACTS. — The Auditorium Hotel entered into a five-year contract granting to a transfer company, in consideration of a certain monthly sum, their exclusive baggage and livery privilege. Soon after, the transfer company became bankrupt, and the hotel now claims to prove for damages against the estate. *Held*, that the bankruptcy is an anticipatory breach of the contract and that proof of the claim will be allowed. *In re Scott Transfer Co.*, Circuit Court of Appeals, Seventh Circuit, October Term, 1913.

For a discussion of the principles involved in this case, see NOTES, p. 469.

CARRIERS — BAGGAGE — UNACCOMPANIED BY OWNER. — The plaintiff bought a ticket on the defendant's line and, although she did not become a passenger herself, used it to send baggage, which was lost. *Held*, that the plaintiff may recover. *Alabama Great Southern R. Co.* v. *Knox*, 63 So. 538 (Ala.).

What authority there is, is contrary to this decision. *Marshall* v. *Pontiac R. Co.*, 126 Mich. 45, 85 N. W. 242; *Southern Ry. Co.* v. *Dinkins*, 139 Ga. 332, 77 S. E. 147. The reasoning of these latter cases, it is submitted, is correct. The railroad has held itself out as a carrier of passengers only, and it is solely as a reasonable incident of passenger carriage that baggage carriage may be required at all. The right to transportation of baggage is not one of two coordinate privileges sold together for a single price. Indeed, the essential element in creating carrier's liability for baggage is apparently delivery to the railroad with intent to become a passenger. *Wood* v. *Maine Central R. Co.*, 98 Me. 98, 56 Atl. 457, commented on in 17 HARV. L. REV. 354; *Beers* v. *Boston & Albany R. Co.*, 67 Conn. 417, 34 Atl. 541, criticized in 10 HARV. L. REV. 186. It has even been suggested that if the contemplated journey is never taken the carrier be relieved of responsibility *ab initio*. See WYMAN, PUBLIC SERVICE CORPORATIONS, § 728. This seems fair where no ticket was ever purchased. But it would not seem reasonable to enforce it against a plaintiff who, having purchased a ticket with the *bonâ fide* intention of making the trip, was prevented from going by circumstances arising subsequent to checking the baggage.